Bail Slip

The Appellant/Accused (1) Kuruna (2) Sulli were directed to be released on Bail in and by the order of this Court dated 29.8.2001 made in Crl.M.P.No.5706/2001 in Crl.Appeal No.760 of 2001 on the file of the High Court, Madras.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 09.08.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.A.No.760 of 2001

1.Karuna
2.Sulli .. Appellants

Vs.

State by
The Inspector of Police,
Dusi Police Station,
Cr.No.98/2000 .. Respondent

Prayer:- This appeal has been preferred against the judgments dated 27.07.2001 made in S.C.No.79 of 2000 on the file of the Additional sessions Judge-cum-Chief Judicial Magistrate, Tiruvannamalai.

For Appellants :Mr.N.Baskaran

For Respondent :Mr.V.R.Balasubramanian
Additional Public Prosecutor

JUDGMENT

The appellants are A1 & A2 in S.C.No.79/2000 on the file of the Additional Sessions Judge, Tiruvannamalai, who have faced trial for an offence under Section 302, 148, 323, 147, 149, 325, 302 r/w 149 IPC along with eight other accused, and were convicted under Section 304 (ii) IPC to undergo 7 years RI each and slapped with a fine of Rs.6,000/- each with default sentence. The remaining accused A3 to A10 were acquitted by the learned trial Judge.

2.The short facts of the case of the prosecution is that due to previous enimity on 22.2.2000 at about 9.00 pm the accused formed themselves into an unlawful assembly carrying deadly weapons like

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aruval, logs sticks and sones have attacked P.W.1 to P.W.6 and the deceased Periya Omen causing grivous injuries and due to the attack Periya Omen died due to the grievous injuries sustained by him at the hands of A1 by aruval on the head.

3.The case was taken on file by the learned Judicial Magistrate No.I, Cheyyar and on appearance of the accused on summons copies under Section 207 of Cr.P.C., were furnished to the accused and since the case is exclusively triable by the Court of Sessions, the learned Judicial Magistrate had committed the case to the Court of Sessions under Section 209 of Cr.P.C.

4.The learned Additional Sessions Judge, Tiruvannamalai, on appearance of the accused before him, had framed the charges under Sections 148, 302 and 323 IPC against A1, under Sections 147, 302 and 323 IPC against A2, under Sections 302 r/w 149, 147 and 323 IPC against A3 to A8 and under Section 302 r/w 149 IPC against A9 and A10, and when questioned, the accused pleaded not guilty. Before the trial Court P.W.1 to P.W.20 were examined, Ex.P.1 to Ex.P.32 were exhibited and M.O.1 to M.O.9 were marked.

5.P.W.1 is the complainant. According to her, one day prior to the occurrence ie., on 21.2.2000 A1, A2, A3, A5, A6 & A7 have assaulted P.W.7 in connection with the occurrence, which took place four years prior to the date of occurrence. According to her, four years prior to the occurrence her husband was keeping A5-Padma as his concubine and later he refused to marry her. Due to the said motive A3 and other accused often abused her husband-P.W.6 and attacked his brother P.W.7 on 21.2.2000. According to her, A3 is the brother of A2 and A4 is the father of A3 and Padma-A5 is the mother of A3, who is the wife of A4 and A6 is the father of A2 and A7 is the mother of A2 and A8 is the wife of A1 and A9 & A10 are their relatives, and that P.W.7 was admitted in the hospital and in this connection he was making complaints with her father-in-law Periya Omen, the deceased herein, along with her husband P.W.6 in the presence of P.W.5, the wife of Periya Omen on 22.2.2000 at about 8.30 pm. At that time all the accused came there and assembled in front of the house of Periya Omen and began to attack Periya Omen. The overtact attributed by P.W.1 to the accused is that A1 had attacked Periya Omen with a knife on the left side of the head causing grievous injury and A2 had attacked Periya Omen with a stick on his chest and stomach and when she rushed to the rescue of Periya Omen A1 had slapped her and A3 had assaulted her with a stick on her left knee and Periya Omen immediately took shelter in one of the three houses belonging to him and that she also ran away from the place of occurrence and stayed in one of her relatives house and came in the next morning at about 5.00 am to the house of Periya Omen where she saw Periya Omen laying dead in the house. Ex.P.1 is the complaint preferred by her. He has identified M.O.1 as the knife used by A1 at the time of occurrence.

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6.P.W.2, an ocular witness according to the prosecution, would corroborate the evidence of P.W.1 to the effect that at the time of occurrence, which took place at 9.00 pm on 22.02.2000, A1 had assaulted with the Koduval on the head of the deceased Periya Omen and A2 had assaulted Periya Omen with a stick on his chest and abdomen and that A6 has assaulted with a stick on her head and A2 had assaulted with a stick on her left shoulder, she along with P.W.6-Selvam took treatment in the Government Hospital at Kanchipuram as inpatients for about three days. She has identified M.O.1 as the Koduval used by A1 at the time of occurrence.

7.P.W.3, another ocular witness, has also corroborated the evidence of P.W.1 and P.W.2. According to her, at the time of occurrence, A1 had assaulted the deceased Periya Omen with a koduval kathi and A2 had bet Periya Omen on his chest and abdomen with a stick and also attacked P.W.2 with the same stick on her left thigh and A8 had hit with a stone on her left cheek, and that Periya Omen asked for water, but A1 had prevented any one to offer water to him and that she took treatment in the government hospital at Kanchipuram for 7 days as inpatient. She also also identified M.O.1 as the koduval used by A1 at the time of occurrence.

8.P.W.4 is the younger brother of the deceased Periya Omen. He has seen his brother Periya Omen lying on the ground with head injuries on the date of occurrence at about 8.30 pm. According to him, A6-Arumugam has strangulated him with a help of a towel and that he was admitted in the government hospital at Kanchipuram for two days as an in patient.

9.P.W.5 is the wife of the deceased Periya Omen. She has corroborated the evidence of P.W.1 to P.W.4. According to her, A1 had assaulted her husband with a koduval and A2 has assaulted her husband with a stick on the chest and stomach repeatedly. She has also identified M.O.1 as the koduval kathi used by A1 in assaulting her husband at the time of occurrence and M.O.2 & M.O.3 are the wearing apparels of her husband deceased Periya Omen.

10.P.W.6 is the brother of P.W.1. He also speaks about motive for the occurrence as narrated by P.W.1 According to him, while they were conversing with the deceased Periya Omen at the place of occurrence, A1 to A10 assembled before the house of Periya Omen and A1 had assaulted Periya Omen with koduval on the head causing grievous injuries and A2 had assaulted Periya Omen causing injuries and that he took the injuried Manokaran to the government hospital at Kanchipuram, where he was informed that Periya Omen died due to the injuries he had sustained in the occurrence. He has also identified M.O.1 as the koduval used by A1 to assault the deceased Periya Omen.

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11.P.W.7, Panneer, would state that A1 to A10 at about 10.00 am had assaulted him due to the previous enmity and that his father had immediately admitted him in the government hospital, Cheyyar, and there was complaint preferred by his father against the accused with the Dusi Police Station.

12.P.W.20 is the then Inspector of Police, Dusi Police Station, who had registered the FIR in Dusi Police Station Cr.No.98 of 2000 under Section 147, 148, 324, 307 and 302 IPC on the basis of the complaint preferred by P.W.1 and Ex.P.22 is the FIR. He had visited the place of occurrence on 23.2.2000 at about 8.00 am and prepared Ex.P.2-observation mahazar in the presence of P.W.8 and has also recovered blood stained sand M.O.4 and sample sand M.O.5 in the presence of P.W.8 under Ex.P.3 mahazar. P.W.20, the Investigating Officer, had arrested A6 and recorded his confession statement. Ex.P.4 is the admissible portion of the confession statement. On the basis of the confession statement of A6, he had recovered 4 sticks and one knife under Ex.P.5-mahazar. P.W.20 had drawn rough sketch Ex.P.23 and had conducted inquest on the corpse of the deceased Periya Omen. Ex.P.24 is the inquest report. He has examined the witnesses and recorded their statements. He has sent the corpse for postmortem through a police constable to the government hospital at Cheyyar along with Ex.P.7, letter of requisition. He has arrested A7 and A10 on 24.2.2000 and recorded their voluntary statement and on the basis of the statement of Annammal-A7, he had registered the counter case under Cr.No.103 of 2000 of Dusi Police Station under Section 147, 148, 324, 323 IPC. He has sent the material objects collected in this case to the forensic science laboratory for chemical examination. He had closed the FIR in Cr.No.103 of 2000 on the ground of mistake of fact.

13.P.W.9 is the VAO of Mahajaranapakkam colany, the occurrence village. He has seen the corpse of the deceased Periya Omen with blood stained injuries on his head on the date of occurrence.

14.P.W.10 has also deposed that on the date of occurrence he had seen the deceased Periya Omen with cut injuries on his head.

15.P.W.11 will speak about the previous enmity that was prevailing between the family of the deceased and the family of the accused, in whose presence P.W.20, the Investigating Officer, had arrested A6 and recorded his confession statement.

16.P.W.12 is the doctor, who had examined P.W.1-Kala and issued Ex.P.6, copy of the accident register. There was no external injuries seen on her by P.W.12.

17.P.W.13 is the doctor, who had conducted postmortem on the corpse of Periya Omen and issued Ex.P.8-postmortem certificate. The

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following antemortem injuries were noted in Ex.P.8:-

i) An incised wound measuring 2 x 5 cms on the right side of the head.

ii) A contusion measuring 2 x 4 cms on the chest

iii) His lower jaw was found fractured

iv) Blood clots on the right eye.

The doctor has opined that due to asphyxia and blood heamorrhage the injured would have died 18 to 22 hours prior to autopsy.

18.P.W.14 is the photographer, who has taken M.O.1(series) photos of the deceased. M.P.8(series) are the negatives.

19.P.w.15 is the Head Clerk of the Judicial Magistrate No.I, Cheyyar, who had forwarded the material objects to the forensic science laboratory for chemical analysis on the basis of the letter of requisition Ex.P.9. Ex.P.10 is the letter sent along with material objects by the Court. Ex.P.11 is the chemical analyst's report. Ex.p.12 is the Serologist's report. Ex.P.15 is another report of the chemical analyst.

20.P.W.18 is the constable who had delivered the express FIR to the concerned magistrate and other officials.

21.P.W.19 is the doctor, who had examined P.W.2-Manokaran for the injuries he had sustained on 22.2.2000 at about 11.55 pm and issued Ex.P.20 copy of the accident register. He had noticed a cut injury on the head measuring 10 x 3 cm into bone deep in his fore head.

22. P.W.20 after following the formalities had filed the charge sheet against the accused on 20.5.2000 under Section 147, 148, 323, 325 and 302 IPC and under Section 302 r/w 149 IPC.

23.When incriminating circumstances were put to the accused under Section 313 of Cr.P.C., the accused denied their complicity with the crime. Ex.D.1 to Ex.D.4 were marked on the side of the accused through the Investigating Officer. The learned trial Judge, after scanning the evidence both oral and documentary, has come to the conclusion that the charges against A3 to A10 were not proved beyond any reasonable doubt and accordingly acquitted A3 to A10 from all the charges levelled against them, but convicted the A1 and A2 under Section 304(ii) IPC and sentenced to undergo 7 years RI each and a fine of Rs.6,000/- each with default sentence. Aggrieved by the findings of the learned trial Judge, A1 and A2 have preferred this appeal.

24.Now the point for determination in this appeal is whether the conviction and sentence against A1 & A2 by the learned trial Judge under Section 304(ii) IPC is sustainable for the reasons stated in

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the memorandum of appeal?

25.The Point:- 25(a) On the basis of of the evidence of P.W.1 and P.W.2, the injured witnesses, and also on the basis of the ocular witnesses P.W.3 to P.W.6, coupled with the medical evidence, the learned trial Judge has convicted and sentenced A1 & A2 under Section 304(ii) IPC. The important fact, which escaped the site of the learned trial Judge is the counter case filed by A7 for the injuries he had sustained at the hands of the accused in the same occurrence at the same time. Ex.P.27 is the complaint preferred by A7 before P.W.20 in respect of the injury she had sustained at the hand of one Mahadevan and Ettiyammal, who have not been cited as prosecution witnesses in this case. P.W.20 has registered the counter case in Cr.No.103 of 2000. Even in Ex.P.27 it has clearly been stated that the occurrence had taken place on 22.2.2000 at 9.00 pm. But in Ex.P.27, A7-Annammal, the complainant therein, has further stated that her husband A6 in this case was brutally attacked with a knife by P.W.6-Selvam on his head. Ex.D.1 is the wound certificate relating to A6-Arumugam, which shows that he was attacked by six known persons on 22.2.2000 at 9.00 pm with knife. He had sustained a bone deep injury in the parietal region (head) measuring 7 x 1 cm. Ex.P.31 is the copy of the accident register relating to A6-Arumugam and Ex.P.30 is the copy of the accident register relating to A7-Annammal. So from the above evidence it is clear that at the place of occurrence at the time of occurrence A6 & A7 have sustained injuries at the hands of P.W.1 to P.W.6. But none of the ocular witnesses in this case viz. P.W.1 to P.W.6 have deposed about the injuries sustained by A6 & A7 in the same occurrence and also about the counter case preferred and registered under Cr.No.103 of 2000. In this regard the evidence of P.W.20, the Investigating Officer, is note worthy to be mentioned. In the cross-examination P.W.20, the Investigating Officer, would admit that on the basis of the complaint preferred by A7-Annammal, he had registered a counter case under Cr.No.103 of 2000 and that Ex.P.27 is the FIR and the complaint preferred by Annammal-A7 is Ex.P.28. He has also visited the place of occurrence and had drawn Ex.P.29, rough sketch and obtained copy of the accident register under Ex.P.30 and Ex.P.31 for the injuries sustained by Annammal-A7 and Arumugam A6 respectively. But he would depose that when prosecution witnesses retaliated the attack of A6 & A7 by way of self defence they sustained injuries. Except the ipsi dixit of P.W.20 that when P.W.3 to P.W.6 attacked the accused A6 & A7 in self-defence, at the time of the occurrence, A6 & A7 have sustained injuries, no ocular witnesses viz. P.W.1 to P.W.6 have deposed in their evidence that at the time of occurrence while the accused attacking them by way of self-defence they (P.W.1 to P.W.6) also retaliated the attack and in the said process A6 & A7 got injured. It is in evidence that there is a long standing enmity prevailing between the family of the prosecution witnesses No.1 to 6 and the family of the accused in connection with P.W.6 keeping A5 as

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concubine. The non-explanation of the injuries of the accused in a case of similar nature was held by the Apex Court, will amount to suppression of the very genesis of the case and it will cut at the root of the prosecution case. The ratio decidendi in AIR 1976 SC 2363 (Lakshmi Singh and others etc., Vs. Sate of Bihar), is the authority on this point, wherein the relevant observation of the Honourable Apex Court, which is necessary for arriving at a just conclusion on the facts of the case on hand is as follows:-

> "In a murder case, non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the Court can draw the following inferences:
>
> (1) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;
>
> (2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable;
>
> (3) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case. (AIR 1968 SC 12 81 and AIER 1975 SC 1674 relied on).
>
> .... The omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or where the defence gives a version which competes in probability with that of the prosecution one. ....
>
> There may be cases where the non-explanation of the injuries by the prosecution may not affect the prosecution case. This principle would obviously apply to cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and credit worthy, that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries."

Ex.D.2, wound certificate for A1 will go to show that A6 has also sustained a bone deep injury on his head. There is no X-ray or CD Scan produced on the side of the prosecution to show that the injury sustained by A6 at the hands of P.W.6 is only simple in nature and not a grievous one. Further none of the ocular witnesses in this case viz. P.W.1 to P.W.6 have whispered anything about the motive against the accused in connection with the keeping of A5 as a concubine by P.W.6. Unless in a case of similar nature wherein a

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case and counter case are there it is the duty of the prosecution to show who are the aggressors for the occurrence. There is absolutely no acceptable evidence adduced by P.W.20 to show that Rule 588(A) of PSO was meticulously followed in this case in filling the charge sheet against the aggressors.

25(b) Further it has been pointed out by the learned Additional Public Prosecutor Mr.V.R.Balasubramanian at this juncture that the deceased Periya Omen had sustained grievous injuries in the neck and according to the evidence of postmortem doctor P.W.13 the hyoid bone was found fractured. There is absolutely no evidence on record to show that the accused have also inflicted the injuries on the neck of the deceased at the time of the occurrence. Under such circumstances, I am of the view that the conviction and sentence imposed on A1 & A2 by the learned trial Judge under Section 304(ii) IPC is not sustainable, warrants interference from this Court. Point is answered accordingly.

26.In fine, the appeal is allowed, setting aside the conviction and sentence of the learned trial Judge in S.C.No.79 of 2000 on the file of the Additional Sessions Judge, Tiruvannammalai. A1 & A2 are acquitted from the charges levelled against them. The bail bonds shall stand cancelled. A1 & A2 are entitled to the refund of the fine amount paid by he them.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

ssv

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To,

1.The Additional Sessions Judge-cum-
Chief Judicial Magistrate, Tiruvannamalai.

2.The Principal Sessions Judge,
Tiruvannamalai.

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3.The IX Metropolitan Magistrate, Saidapet,
Chennai.

4.-do-The Chief Metropolitan Magistrate, Egmore,
Chennai.

5.The Public Prosecutor, High Court,
Madras.

6.The Inspector of Police,
Dusi Police Station,
(Cr.No.98.2000)

7.The Superintendent,
Central Prison, Vellore.

8.The Director General of Police,
Mylopore, Chennai.

9.The District Collector,
Tiruvannammalai.

+1cc to Mr.N.Baskaran, Advocate Sr 49783

AKR (CO)
km/17.8.

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